

This pamphlet has been prepared as a public service to provide an understanding of the duties and procedures of the Franklin County Probate Court regarding guardianships. It is intended to be an overview only and should not be considered as a legal reference. Laws pertaining to these topics may change. Legal advice should be obtained from an attorney.

## **GUARDIANSHIPS**

A guardianship is a court ordered relationship in which the guardian acts on behalf of the ward. Wards are persons who are not able to care for themselves or their property. The guardianship may be for the estate only in the circumstance where the guardian cares for the ward's assets. The guardianship may be for the person only when the guardian has responsibility to assure the personal needs of the ward are met. A guardianship may be established for both the person and estate of the ward.

### **WHO CAN BE A GUARDIAN?**

A guardian can be an adult person or corporation appointed by the Probate Court. The guardian must be a resident of Ohio.

### **WHO NEEDS A GUARDIAN?**

An incompetent adult or minor child can have a court appointed guardian. The law defines incompetent as:

. . . any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a penal institution within this state.

A minor in this state is any person under the age of 18.

### **WHO SELECTS THE GUARDIAN?**

Any interested person may apply to be guardian. A minor over the age of 14 may nominate a guardian. Parents may nominate a guardian for their minor children in their wills. An adult may also

nominate a guardian through a durable power of attorney. The Court makes the final selection of a guardian.

## **HOW IS A GUARDIANSHIP STARTED?**

The guardianship process is started by filing an application on Court approved forms in the Probate Court of the county where the ward resides. The applicant must agree to perform the responsibilities of the guardian. If the proposed ward is an adult, the Probate Court Investigator will visit the proposed ward, give notice of the hearing, and make an independent assessment regarding the need for the guardianship. Additionally, if the proposed ward is an adult, an evaluation shall be completed by the appropriate expert and filed along with the guardianship application. A hearing will be held before the Probate Judge or a Magistrate at which time a determination will be made as to the necessity for the guardianship and the suitability of the applicant.

## **RIGHTS OF THE WARD**

The rights of the prospective ward include, but are not limited to; the right to be present at the hearing, to contest any application for guardianship, to show any less restrictive alternatives, to have a court reporter at the hearing, to have a friend or family member present at the hearing, to have an independent evaluation by a court appointed doctor and to be represented by an attorney. Once a year the ward may also request the Court evaluate the continued necessity of the guardianship.

## **COURT SUPERVISION**

By law, the Probate Court is the superior guardian. All guardians must obey the Court's orders as they concern the guardianship. The Court uses the following means to assist in this supervisory role:

**Inventory:** A listing of all assets of the ward filed by the guardian of the estate.

**Accountings:** The guardian of the estate must file an annual account showing all receipts and expenditures and remaining assets.

**Reports:** The guardian of an adult ward must file a report every 2 years describing the mental and physical status of the ward and the continuing need for the guardianship.

**Citations and Contempt:** If the guardian fails to

file the required inventory, accounting or report, or if the Court feels it is necessary to inquire into the actions of the guardian, the Court may order the guardian to appear by means of a citation, and when appropriate may hold the guardian in contempt. A finding of contempt may result in a fine, sentence to jail or removal as guardian.

**Investigations:** When a question arises concerning the administration of the guardianship, the Court may order an investigation be conducted by its Court Investigator, a law enforcement agency, Adult Protective Services, the County Board of Mental Retardation and Developmental Disabilities, the County or City Board of Health or another governmental agency.

**Prior Approval:** The guardian of the estate must obtain prior approval of the Court before expending guardianship funds for the benefit of the ward, entering into contracts or leases for the ward, making improvements to real estate, mortgaging real estate, selling assets of the ward or settling any claim of the ward.

**Removal:** The Court may remove the guardian for cause after hearing.

## **TYPES OF GUARDIANSHIPS**

**Person and/or estate:** A guardian of the person controls and protects the personal needs of the ward. A guardian of the estate controls and protects the assets of the ward.

**Limited:** The authority of the guardian is limited to specific purposes. The ward retains all powers not granted to the guardian.

**Interim:** When a guardian is no longer able to serve or is removed, an interim guardian may be appointed for a short period of time, without notice to the ward or the ward's family, until a hearing can be held to appoint a successor guardian.

**Emergency:** Upon emergency, the Court may appoint a guardian without notice to the ward or the ward's family. The emergency guardian shall serve for a short period of time to protect against significant injury to the person or estate of the ward.

## **FEES**

Guardian fees are determined by this Court's local rules. Attorney fees are determined by Ohio Supreme Court rules and this Court's local rules. Fees must be approved by the Court before payment.

## TERMINATION

The guardianship will be terminated upon the death of a ward, upon the ward being restored to competency or in the case of a minor, upon attaining the age of 18. An adult ward may file a motion to evaluate the continued necessity of the guardianship 120 days after the appointment and once a year thereafter.

## CONSERVATORSHIP

A conservatorship is a voluntary court supervised relationship in which a mentally competent but physically infirm adult applies to the Court to appoint a conservator to care for the applicant's person, property or both.

## WHO CHOOSES THE CONSERVATOR?

The conservator is selected by the applicant subject to the approval of the Probate Court.

## THE COURT'S ROLE

After the application is filed, the Court must have a hearing to determine that: the applicant is physically infirm, the application is voluntarily submitted and the conservator is suitable to serve. The authority given to the conservator may be limited by the applicant. After the application is granted, the laws which apply to guardianships will also apply to the conservatorship. The applicant then becomes the conservatee, the person for whom the conservatorship is established.

## HOW IS THE CONSERVATORSHIP TERMINATED?

The conservatorship is terminated if the Court determines the conservatee has become mentally incompetent, dies or by written notice of termination by the conservatee.

## LEGAL PRACTICE IN THE PROBATE COURT

Legal practice in the Probate Court is restricted by law to attorneys who are licensed by the Supreme Court of Ohio. If an individual wishes to handle his or her own case, that person may do so, however, such person may not represent others. Due to the complexity of the law and desire to avoid costly errors, most individuals who have matters before the Court are represented by an attorney. Court employees are prohibited by statute from practicing law and cannot give legal advice.



Dear Franklin County Resident:

The Policy of the Franklin County Probate Court is to fulfill its duties as efficiently and effectively as possible. I sincerely hope you find this brochure helpful and your experience with our Court pleasant and successful.

A handwritten signature in dark ink, reading "Lawrence A. Belskis".

**LAWRENCE A. BELSKIS, JUDGE**

FRANKLIN COUNTY  
COURT OF COMMON PLEAS  
PROBATE DIVISION

Franklin County Court House  
373 South High Street  
22nd Floor  
Columbus, OH 43215-6311

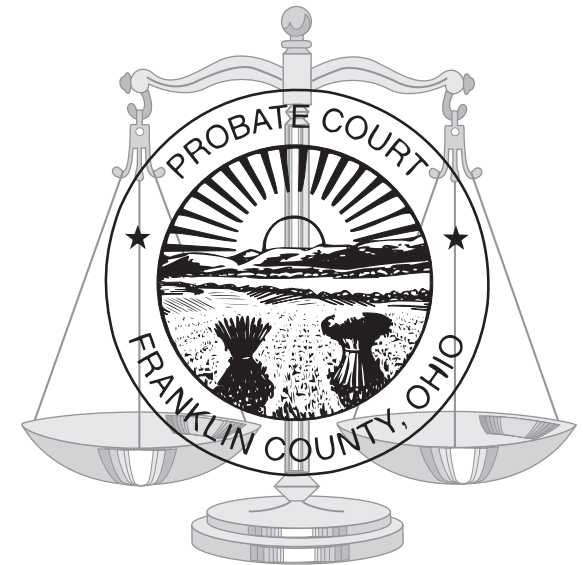
## HOURS

Monday - Friday: 8:00 A.M. to 5:00 P.M.  
(Cashier closes at 4:30 P.M.)

GENERAL INFORMATION - 462-3894  
GUARDIANSHIP DEPARTMENT - 462-3841

WEBSITE: [www.co.franklin.oh.us/probate](http://www.co.franklin.oh.us/probate)

# GUARDIANSHIPS



Prepared and  
issued as a  
public service  
by

**JUDGE LAWRENCE A. BELSKIS**

**FRANKLIN COUNTY  
PROBATE COURT**